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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,943	06/21/2007	Jurgen Otto	026032-5068	2662
23428 7590 01/07/2009 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER				
ALEX, JAMES S				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/590,943

Applicant(s)

OTTO, JURGEN

Examiner

JAMES ALEX

Art Unit

3636

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18, 21-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Applicant's amendments to claims 1, 3-5, 9, 11-18, the cancellation of claims 19 and 20, and new claims 21 and 22 received 10/16/08 have been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitation "the rotational element" in page 4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-14 and 16-18, 21, 22, are rejected under 35 U.S.C. 102(b) as being anticipated by Bidare US 20020096928.

Re claims 1-8, 21-22, Bidare discloses a device for adjusting the angle of a component (vehicle armrest) 44 comprising a peripheral internal first internal peripheral locking toothing 48 (considered to be both internal and peripheral since it is located inside the armrest and at a periphery of 26), a rocking lever 22 with a second external locking toothing 46 that interacts with the first locking toothing (Par [0021]), the rocking lever able to be set in a stable locking position and in a stable release position when button 16 is depressed or released, and a control element 54, acting on a snap action spring 24 in at least one angular position of the component, the spring able to be set in two stable positions for setting the locking and release position of the rocking lever (since the spring is disclosed to bias the control element which in turn biases the rocking lever, it is considered to meet the limitation of setting the rocking lever in two stable positions, the locking position being when the button 16 is released, and the locking position being when the button is depressed).

Bidare further discloses an externally toothed control device 86 (with external tooth 88 meeting the limitation of being externally toothed and arranged to interact with the first peripheral internal locking toothing 48, located on the periphery of an inner part of the mechanism) which allows the component 44 to be rotated in a first direction and locked in a second direction (Par [0021]); and arranged such that the control device interacts with the first locking toothing to rotationally fix the control device relative to the first locking toothing (see Pars. [0019] - [0021], which disclose the control device assisting in the process of fixing the position at which the pawl teeth drop into engagement dependent on the angular position of the armrest; this is considered to

meet the broad limitation of the control device interacting with the first locking toothing to rotationally fix the control device, since it does in fact interact with the toothing and fixes the position of the control device relative to the first locking toothing, see Par [0021] which discloses the position of the control device is secured by the rounded index tooth 88).

The rocking lever is considered to be in a stable locking position when the adjustment button 16 is released, and a stable released position when the adjustment button 16 is depressed. When in the stable locking position and in stowed position 34, it is locked from movement in a first (upward) direction, but allowed to rotate in a second (downward) direction (see Pars. [0017] [0018]).

Re claims 9-14, and 16-18, Bidare discloses a locking mechanism for an armrest comprising: a first component 22 having a plurality of external teeth 46, and a rocking lever 50 coupled to a rotational element 56, wherein the external teeth are located on the rocking lever, the first element configured to rotate through a range of rotation relative to a second component 26 having a set of internal teeth 48; a first (snap-action) spring 24 mounted on the first component ; wherein the first component is releasably lockable in two positions wherein the external teeth at least partially engage the internal teeth; and wherein the first component is freely rotatable through a portion of the range of rotation of the armrest; and wherein the spring has first and second stable positions (when the mechanism is locked or unlocked), and wherein the spring is moved from the first stable position to the second stable position (wherein the spring biases the external

teeth toward the internal teeth) by engaging a projection 76 on a control device (including 28 and 72).

Bidare further discloses a control device (including 28, and 72; 72 is permanently fixed relative to the second component, 28 is fixed relative to the second component when the lock is engaged) having a locking toothing 88, limiting the range of rotation of the first component (see Pars [0018] and [0021]) by preventing engagement of the internal teeth and the external teeth through a portion of the range of rotation of the armrest such that the first component may freely rotate with respect to the second component; wherein the control device includes a first surface 64 and a recess (not numbered, see Fig. 5 where end 60 of first component is within a recessed portion of 66), the range of rotation of the first component defined by the angular displacement of the first surface from the recess; wherein the rotational element is configured to be rotationally fixed to the armrest, wherein the control device includes a first control element 72 that engages the rocking lever (Par [0018]),

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Bidare US 20020096928.

Re claim 15, Bidare discloses the claimed invention except for the recess including a second spring member. However, Bidare discloses a spring member 20 that releasably locks the first component in the recess via keeping adjustable arm 18 from pushing the first component out of the recess. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the spring member 20 in another location which would meet the limitations of the recess including the spring member, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70. Additionally, since every part is in contact with every other part, this limitation can be broadly interpreted such that the recess does include the spring member 20.

Further, it would have been an obvious matter of design choice to change the size of the spring member, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Further, in *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative

dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Response to Arguments

Applicant's arguments filed 10/16/08 have been fully considered but they are not persuasive. In response to Applicant's argument that the function of components 86 and 88 of Bidare do not "rotationally fix the control device relative to the first locking toothing or the second component, the Examiner disagrees because in Paragraph [0021] Bidaire discloses that components 86 and 88 interact with the first locking toothing and fix the position of the control device relative to the first locking toothing, and effective relative to the second locking toothing as well when the armrest is locked.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES ALEX whose telephone number is (571)270-3740. The examiner can normally be reached on M-TH, 7:30 am to 5:00 pm; F, 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dunn David can be reached on (571) 272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DAVID DUNN/
Supervisory Patent Examiner
Art Unit 3636

